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OFFICE OF PETITIONS

In re Application of
Sulak et al.
Application No. 09/629,370
Filed: July 31, 2000
Attorney Docket No. 18/05085742

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed February 16, 2010, to revive the above-identified application. In view of the allegation in the petition of non-receipt of the Office action, the petition is more properly a petition under 37 CFR 1.181 requesting the withdrawal of the holding of abandonment in the above-identified application and has been so treated.

The petition to withdraw the holding of abandonment is **GRANTED**.

The above-identified application was held abandoned for failure to timely reply to the non-final Office action mailed July 22, 2009, which set a shortened statutory period for reply of three (3) months. A reply was due on or before October 22, 2009. A Notice of Abandonment has not yet been mailed.

Petitioner asserts that the Office action dated July 22, 2009 was not received. Petitioner further points out that the Office action was mailed to the incorrect address. A Change of Correspondence Address was previously submitted on May 22, 2008, but has not been entered into the USPTO system. An internal annotation on the Change of Correspondence Address states it was not accepted because it was not signed by an attorney of record. See MPEP §§ 601.03 and 405.

Currently, as listed in the USPTO system, the attorneys/agents associated with Customer Number 23380 have power of attorney, and petitioner, James C. Scott, is not listed. However, it is unclear when and why the power of attorney shifted to the attorneys/agents associated with Customer number 23380. The original Oath/Declaration filed on July 31, 2000 appoints seven attorneys individually, not by Customer Number, and includes the petitioner. The Oath/Declaration filed March 12, 2001 lists the same attorneys individually, but includes Customer Number 23380 as the correspondence address. Further, no new Power of Attorney or Revocation of Power of Attorney has ever been received in the instant application.

Accordingly, as power of attorney was never revoked from petitioner, the Change of Correspondence Address should have been accepted and entered.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status. The petition to revive under 37 CFR 1.137(a) is hereby dismissed as moot.

A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee and none has been charged.

Additionally, Office records have been updated to set forth the correct attorneys/agents of record.

This matter is being referred to the Technology Center technical support staff of Art Unit 2173 for re-mailing the Office action of July 22, 2009. The period for reply will run from the mailing date of the Office action.

Telephone inquiries concerning this decision should be directed to Petitions Examiner Liana Walsh at (571) 272-3206. All other inquiries should be directed to the Technology Center.

/dab/
David Bucci
Petitions Examiner
Office of Petitions